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Apportionment of Representation: Speech of Hon. Lot M. Morrill, of Maine, in the Senate of the United States, March 8, 1866

Lot M. Morrill

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APPORTIONMENT OF REPRESENTATION.

SPEECH

OF

HON. LOT M. MORRILL,

OF MAINE.

IN THE SENATE OF THE UNITED STATES, MARCH 8, 1866.

The Senate having under consideration the joint resolution (H. R. No. 51) proposing to amend the Constitution of the United States—

Mr. MORRILL said:

Mr. PRESIDENT—I rise to discuss one or two topics connected with this question, and shall not occupy much of the time of the Senate. To show that the proposition is important, it only needs to be stated that it proposes to change the basis of representation in the popular branch of the national Congress. Its importance is rendered, I was about to say, painfully significant by the discussions which have obtained upon this floor in the last few weeks, during which it has occupied the attention of the Senate.

It is said to be unnecessary, unimportant, and that it is unjust to the States, particularly the States recently in rebellion. It is said, on the other hand, by those who take a different view of the subject, that it is particularly unjust to the freedmen, whom it is the duty of the nation to protect and provide for. It was said yesterday that by adopting it we violate a great principle of American law and American liberty; that it is unjust to a defenceless and unprotected race, the wards and allies of the nation, whose duty it is to give them protection.

It is plain that between these cross-purposes, if persisted in, the measure is to come to naught. My purpose, so far as I have any object or method in the treatment of the subject to-day, will be to show that neither of these propositions is just. It is not unjust to the States recently in rebellion; it does not, as is supposed, violate a great fundamental principle of American law; and on the other hand, it does not violate, as is supposed, the principles of popular liberty in the person of this dependent race. Upon the contrary, I shall maintain that its tendency is in the direction of popular liberty. Although I shall not pretend that it is an adequate measure of justice, that it deals out full and ample justice to this feeble race, which all must agree it is the high duty of the nation to protect and defend; yet I maintain that its tendency is in that direction, and those who would do what they can, now that they cannot do all they would, may accept it, and ought to accept it.

Sir, what is the issue precisely? It is said it is to change the fundamental basis of representation. I do not quite agree to that. Rather, I maintain that it is to adjust the nation to the great events of the war. Those who have been at all watchful of the passing events of the last five years, doubtless recognize some changes in the condition of the country. The great civil war through which the nation has passed in its march, and in the sweep of its events, has worked radical changes in public affairs. Sir, it has worked among other things a fundamental change in the basis of representation provided for in your Constitution. That change renders this proposition necessary. In the Constitution of the United States representation in the popular branch of Congress was based upon "the whole number of free persons, including those bound to service for a term of years, and, (excluding Indians not taxed,) three-fifths of all other persons."

One of the great changes which have eventuated from this war is an amendment of your Constitution which forever sweeps away from the Constitution of the United States the "other persons" mentioned in it, and which constitute a portion of the basis of representation. Slavery and involuntary servitude have been swept from the pale of the Constitution; and thus has changed the fundamental basis of representation in the popular branch of Congress. How is the fact, however? Notwithstanding this radical change, the fact is that to-day Representatives from eleven States are demanding admission into the lower branch of Congress based upon the system of slavery, which is among the things that were; which is altogether in the past. The question is presented, shall the American Congress admit into its councils some thirty Representatives in the lower branch of Congress based upon a provision of the Constitution now rendered obsolete by the changes to which I have alluded? Why, Mr. President, to do that would be to bring again into your presence the institution of slavery itself. It would be to say that notwithstanding events that have transpired, you still recognize its existence as a political power in the nation. To-day, thirty Representatives, in theory and in fact, demand admission into the lower House of Congress, based entirely upon the representative system as originally provided for by the Constitution of the United States, ignoring all changes.

To those who deny that an amendment to the Constitution is necessary, I reply, how are you providing for this obvious change in the representative basis? The provision of the Constitution providing for representation based on three-fifths of the "other persons" no longer exists. How shall equal and just representation be provided for? Some amendment is rendered absolutely necessary, unless the American Constitution is to give to the nation the expression of utterly contradictory sentiments, saying in one place that involuntary servitude no longer exists, and in another, bearing on its front, in marked contrast, that three-fifths of "other persons" are to still constitute the basis of representation.

Mr. SAULSBURY. If my friend will allow me to interrupt him, I will ask him whether he is in favor of giving to the southern negroes a right to vote, and whether he means to exclude the southern States from the right of representation because they do not allow the negroes to vote?

Mr. MORRILL. If the Senator will pardon me until I get under way a little, I will try to answer all questions. I say then, Mr. President, from the fundamental changes which have taken place in the Constitution, some

amendment has been rendered necessary to preserve its unity and to prevent unequal and unjust representation in the national councils. Representatives based on the provision of the Constitution for the representation of "three-fifths of all other persons," demand admission into the national Congress, and Senators stand here to oppose, nay, denounce as unwise, inexpedient and revolutionary, any amendment whatever. Why, sir, the admission of these Representatives, based upon this principle of the Constitution, "three-fifths of all other persons," means the recognition of the institution of slavery. That is dead, gone, is wholly of the past; and yet its Representatives demand admission to these Halls, and we are told that no amendment of the Constitution is necessary. The American Congress is called upon to concede that demand, or to reform this provision of the Constitution, and adjust it to the events of the times.

Now, Mr. President, the Committee on Reconstruction, looking at this question, I think wisely, undertake to adapt the nation to the events of the war. They take notice of a revolution in public affairs, marked and decisive, which has changed the political and social system in half the nation, and which has wrought a change also in the popular basis of representation; and now propose to provide for the apportionment of representation according to the principles of the Constitution, and to place the question upon some basis which shall be in harmony with the principles of the Government. And what is that basis? Substantially it is this: that representation hereafter shall be based upon citizenship. That is the rule; that is the implication of this amendment. Heretofore representation was based upon free persons and upon three fifths of "all other persons." "Three fifths of all other persons" being stricken out of the Constitution, the committee go upon the assumption that all are now free persons, and being free persons they are citizens, and being citizens they are entitled to representation, and if any State undertakes to deny them representation, to deny them suffrage, that State shall not represent them to that extent. In its endeavor, it is just. It is on the side of popular rights. It has an implication, perhaps, which is unjust; but as an endeavor, it is in the right direction. It is saying to these States, "We recognize the principle of citizenship as the basis of representation; you must recognize it or you must not represent those to whom you deny the right."

With this statement I justify the vote which I shall give for this amendment. I think the amendment on its face stands self-justified in the situation in which we are placed. I shall proceed to examine some of the objections which are brought against the adoption of this amendment. It is said that any amendment of the Constitution in these times is unnecessary, inexpedient, and unwise. There are Senators here, and a class of persons throughout the country, who denounce all amendments of the Constitution at the present time as unwise and injudicious. We are told these are not times suited to an amendment of the fundamental law. I have already adverted to some of the facts which I think justify the conclusion that an amendment of the Constitution is our necessity; that to adjust the nation to the great events of the war, it has become necessary to amend its Constitution and its general code of laws.

But, Mr. President, I do not forget the history of the past few years. I do not forget that within the last five years a class of statesmen and politicians, who now resist all propositions for an amendment of the Constitution, here and elsewhere, urged and demanded amendments of the Constitution of the nation.

What were the circumstances then? Several States threatened to dissolve this Union. Several States had taken an attitude hostile to the Government of the country. They demanded the extension, the protection and the perpetuation of slavery; and upon that question the country was divided. Then, amendments to the Constitution were proposed without number, here, elsewhere, and everywhere. Amendments to the Constitution seemed to be the order of the day. To what end, and for what purpose? To increase the power in the hands of the few who wielded the political power in those States, and who were demanding it. What is the question to-day? It is the same question precisely, in another form. They brought on civil war, rebellion, and insurrection. They have been defeated. The institution of slavery has passed away in form, but it still lives in spirit. It stalks the earth in power. It comes to your Halls and demands admission. It abates not one jot of its power and force. It not only demands admission with the strength that it had when the war began, but it demands that its strength shall be increased by two-fifths of its former slave population; that its political power in Congress shall be augmented by two fifths the four millions of former slave population. In that event, by the rebellion, the South has not only lost nothing, but in the scale of political power those who were capable of being the enemies of the nation, and may be again, have added to their strength two-fifths. As statesmen, that is the proposition you have to meet. Is it not plain that the national security demands that this proposition should be adopted?

But yesterday we had an additional reason, a reason which I did not anticipate, given why this amendment should not be adopted, and that was, that it was wholly unnecessary, because, it was said that by the events which were transpiring in the country, in regard to the recent slave population, there need be no apprehension of excess of representation based on the "whole number" instead of three-fifths, from the important fact that they were "passing away." If I gather the force of that argument, it is this: we are to base no legislation and no action upon the idea that this race, recently slave, now free, is part and parcel of the American people, the object of our care, solicitude and protection; they are disappearing as a population, dying; let them be represented as slaves now, and let them never enter into the basis hereafter of the representative system. Sir, that is the old argument, an argument worthier of another period than this. Our people have been an inexorable people in some respects in regard to the races that have been within their power. In the march of our civilization across the continent, the iron heel of that civilization has rested upon the Indian, and he is giving place to the civilized man. We seem to contemplate the probable extinction of the Indians from our limits with composure. He is a nomad; he is a savage; he is a barbarian; he is not embraced within our morals or laws; he is not within the pale of the Constitution, but flits upon the verge of it, outside of its protection, the subject of our caprices, and sometimes, I think, of our cupidity. And, now, if any consequence is to be attached to the remark of the honorable Senator from Wisconsin [Mr. DOOLITTLE] yesterday, this "inferior race" is not to be the subject of our solicitude; they too, are to give place to the dominant race; it is not worth while to change your Constitution in regard to them; let them be represented as two-fifths slaves on the old basis until they shall have perished, and then your Constitution will need no amendment. The laws of a fearful antagonism of superior and inferior races are expected to accomplish what, if American statesmanship does not incite, it contemplates with apparent resignation.

Mr. President, I hail with something like a sense of gratitude this proposition, because it recognizes at least the great fundamental principle of American constitutional law and liberty, that representation in the national councils ought to be based on citizenship, and so far as the national councils are concerned it shall rest nowhere else. That is the significance of this proposition. Contemplating it in that view, I content myself to vote for it, although I think it not wholly adequate to the immediate exigency of the times. I would much prefer to say to these States, "If you desire to be represented at all in these Halls, you shall do equal and exact justice to all the citizens of the United States, without regard to color." That is the mandate that should go forth from these Halls. That is the equal and exact justice which this nation should hold out to these men, but recently the enemies of the nation in arms, before they should be permitted to set their feet in these Chambers to represent themselves. But, sir, it would shock the sense of the nation, and I am sure it would shock the sense of justice of mankind, if the American Congress were to allow these people to come here restored to authority and represent the old system of slavery, now dead and buried, and in addition to that, allow them a full representation according to the numbers of a race to whom they deny all privileges and rights.

But it is said that an amendment of the Constitution, such as is proposed, is inexpedient at this time. Eleven States, we are told, are demanding seats upon this floor, and are impatient of delay. The honorable Senator from Delaware [Mr. SAULSBURY] the other day became plaintive over the condition of these people and States. He told us their situation was one of suffering and desolation; that they needed representation here; and that they were anxious to be represented upon this floor. That, I submit, sir, is not the highest consideration for the action of the Senate. There are subjects quite independent of the desires of these States necessary to be considered. I shall not undertake to recapitulate in detail what has been said by those who, on that side, have addressed themselves to this subject in behalf of these States; but we have been told that it is for the interest of the nation to receive these States into the Union, and that they should be represented on the floors of the two Houses of Congress; that this is the national necessity, higher than any other consideration, higher than that of representation or adjustment of representation, higher than that of protection to the freedmen, higher than that of national justice. We are told that the great political necessity of the times is the admission of these States now, unqualifiedly, without hesitation and without the judgment or action of Congress. In language quite significant, passionate sometimes, you have been told that these States must be admitted now or hereafter as they are. In the language of the Senator from Kentucky, [Mr. GUTHRIE,] "you will have to admit these States, or do worse."

To all such passionate invective I have just one reply, and that is, the actual and legal condition of these States is that of "insurrectionary States." That is their legal designation; that is their legal *status*. The Congress of the United States, the high legislative power of the nation, the supreme war power of the country, the Executive included, gave them the designation of insurrectionary States. They have been moreover regarded by the world for the last four or five years as belligerent States. When Congress adjourned last year, that was their condition. It returned to find them here knocking at the doors of Congress, as it was said, with their representation, for admission into the councils of the nation.

Now, sir, if that state of things has been changed, how and upon what authority has it been changed? When the war power of the Government had overcome the rebel forces, and compelled them to surrender, what was the condition of these States? General Sherman, acting as he supposed within the scope of his military functions, undertook to recognize these States as existing. Those who remember his military memorandum will remember that according to the provisions of that memorandum, these States were to be recognized as in existence; all the officers of the States were to be restored to their offices upon taking the oath to support the Constitution of the United States, and their privileges and their franchises were to be recognized and guaranteed to the people of these States; but what was the result? The President of the United States repudiated it at once and altogether. The President held, and held properly, and so did the country, that these States did not exist as States in the Union; they did not exist civilly; their governments had been subverted. By rebellion and civil war they had abdicated civil authority; their State governments had been overthrown, and therefore General Sherman's memorandum, which would have recognized them, and which would perhaps have brought them upon this floor as States, was repudiated utterly and entirely. The President of the United States very properly and very patriotically held that the proposition that these States were States of the Union, having civil or political existence, now that they had laid down their arms, was not a proposition to be entertained anywhere; but that their State governments had been overthrown; they were out of their relations with the Union; they were disorganized.

The President went further. When the civil authorities in the rebel State of Virginia undertook to exercise authority, he warned them that such assumption would be treated as usurpation, and they would be held to the strictest accountability by the military authorities of the United States for any attempt to exercise civil functions in the State of Virginia. General Sherman was thus given to understand that he did not comprehend the great political questions which underlaid the war. It was well enough for him to receive the surrender of the rebel army, but he could not, as a military commander, make terms for the restoration of States to the Union, by which the authority of those States could be recognized. The President treated their State governments as having been overthrown; that there was no civil officer in all the South who could perform civil functions of any kind whatever. The States and the people were held to be in a state of absolute civil and political disability.

That being the condition of the whole southern country, will anybody show me how it came to pass that these States were "reconstructed," "reorganized," in the absence of Congress and of legislation upon the subject? What were the President's functions? These States, in his view of their condition, had lost their State governments; there were no civil officers, and there could be no political or civil functions. What was his authority? How was he acting? Of course in the double capacity of President of the United States, sworn to maintain the laws and protect the Constitution, and as Commander-in-Chief of the Army and the Navy. As President of the United States of course he could only enforce the law; but there was no law on the subject. Congress had passed an act providing for the contingency which has arisen now, but it had failed to become a law; and as to the reconstruction of States there was no law; the nation was without law on that subject.

Congress had never provided for such a case, and therefore there was no law to execute. The only capacity, therefore, in which the President could act was in that of Commander-in-Chief of the Army. Will it be pretended that as Commander-in-Chief of the Armies of the United States the President had any authority to reconstruct States, or to use his own language, to "organize" States? Not at all. The organization of States is civil and legislative in its character purely. Now, looking at results, what has been accomplished in those States? Substantially, I submit, what was repudiated in Major General Sherman's plan. To-day, substantially, as a matter of fact, these States are restored, if at all, to the same *status* to which they were proposed to be restored by the memorandum of Major General Sherman.

What was done? Major General Sherman proposed to recognize these States on the condition that the officers should take the oath to support the Constitution of the United States. The condition, it will be observed, was an oath to support the Constitution. Governor Perry was authorized to "organize" the State of South Carolina, for example, on the condition of an oath to support the Constitution, including other things. Both were by military authority, and rest on the basis of an oath. General Sherman's plan contemplated the recognition of the officers of the State upon taking the oath to support the Constitution, and Governor Perry actually restored the officers of the State of South Carolina to their offices upon taking the prescribed oath.

It is needless to say that whatever the President did in regard to these States was necessarily a military act.

My honorable friend from Wisconsin [Mr. DOOLITTLE] undertook to explain this policy, and to tell the Senate what were the functions of Governor Perry. He said they were not exactly those of a provisional governor; but he was called a "provisional governor" by the President. He said he was not exactly a military officer, for he was not commissioned thereunto, and could not be, without the consent of the Senate; but he was in the nature of a negotiator to negotiate terms of peace. Our case required no negotiation, and admitted of none. This was a civil war, and the Government of the United States was proceeding against the States waging war upon it, upon the ground that they were "insurrectionary States" and must be overcome, and the insurgents dispersed, subjugated, subdued, and coerced, and not upon the ground that they were to be negotiated with.

The truth is, the honorable Senator from Wisconsin undertakes to apologize for an act which he cannot justify, and which he finds no warrant either in law or the Constitution to authorize. If he was not a "provisional governor," then he could not exercise a civil function. If he was a military governor, then he must have his commission; and as he had no such commission, he had no office, and could have no function; and that was the condition of Governor Perry. He was an agent, but a military agent, without authority of law anywhere; and the fruit of his labor, of course, must be irregular. The best that can be said of these States which we are demanded to admit here without consideration and without discretion, is that they are military States. At the close of armed rebellion they had no organization. If they have any now, it is a military organization, an organization which Congress cannot respect; an organization which needs the ratification of the legislative authority to make it valid. I do not criticise these proceedings to complain of them. It was the province of the President to organize military departments or governments in all that section of the nation that had at length surrendered to its military authority.

He might adopt the mode and employ the agents which he deemed best suited to that end. As Commander-in-Chief, he could hold such governments subject to his military power, as he still continues to do, until the supreme legislative power of the nation should make provision for the case. But could he, as President of the United States, Chief Executive, invest these States with the political and civil rights of "sovereign States" in the Union, and at the same time hold them wholly to his power as Commander-in-Chief of the Army and Navy? If they are American States in the Union, only lacking representation in Congress, with governors, legislatures and courts, their civil authority restored, on what grounds is it that these governors, legislatures and courts are held subordinate to the power of the commanders of military departments; and on what ground is it that the constitutions and laws of those States are set aside and annulled by military orders of the commanding generals? It is that the war is not over; not so been adjudged. The military authority of the President is supreme; the volunteers who enlisted for the war are not yet permitted to return to their homes; the laws are not yet supreme; and the insurrectionary States have not yet been restored to those relations with the nation essential to peace and repose, by the supreme legislative authority.

Now, Mr. President, it is contended that this proposed amendment to the Constitution violates the great American rule of representation embraced in the Constitution, which rule is defined to be "representation according to numbers." I allude now to the argument of the honorable Senator from Maryland, [Mr. JOHNSON.] If I understand his proposition and his reasoning, there are no longer "other persons" mentioned in the Constitution, three-fifths of whom constituted a part of the basis of representation. His next postulate is, that these slaves have become freemen, and being freemen, are citizens. I will read an extract from the Honorable Senator's speech, in which his view on that subject is much better stated than I could state it:

"Now, as far as relates to the quota of taxation, or as far as relates to the quota of representation, the state of things is materially changed. There are no men, so to speak, who are but three-fifths men. We all stand upon the same platform. As we came from nature's God, we stand together upon an equality as far as relates to human rights, and it was entirely unnecessary, therefore, to change the mode of apportioning representation, or of apportioning taxation, except for some other purpose which did not enter into the estimation of the wise and good men by whom the Constitution was adopted in recommending this particular provision."

This argument proceeds, first, upon the assumption that the "other persons" no longer constitute the basis of representation, and that those "other persons," by the change in the Constitution freeing the slaves, have become free men, and being free men, are citizens, and being citizens are entitled to representation. I assume that to be the method of the argument. It is difficult for me to see that there could be any other. The difficulty in the proposition is that the assumed fact is not conceded to be the fact. Who says that these slaves ceasing to be slaves become free men? I know the Honorable Senator from Maryland says so, and it does him great credit; but what is the fact in the States that are interested in this question? Do they say it? No sir. They hold that when they ceased to be slaves they merely became "freedmen," simply not slaves. But were they invested with political rights and privileges? Not at all. Were they free men? Not a bit of it. Were they citizens? The last thing in the world. They are freedmen simply; and their argument is, that according to all law and usage, ancient and modern, the simple act of

freeing a slave, if you go no further, does not invest him with all the rights, civil and political, and with all the immunities of the community in which he happens to be. What, then, is the condition of these "freedmen" in these States? They hold them to-day as altogether outside of the objects of society. They say they never were American citizens. They are Africans in America; that is all: they are not citizens; they are not free men; they have no right whatever which that community is bound to respect; they are more than ever beyond the pale and protection of the Constitution; they have not even a master to serve who has an interest in their service and who will care for their physical condition.

Sir, it does not follow by any means that these men who were slaves are now freemen, but, according to the whole code of the South, morals, laws, and constitutions of the South; the very structure of its society, civil, social, and political, they are outside of the pale of society, outside of the pale of the Constitution. They are not members of the body politic in any sense whatever. They are nomadic in their relations. They are, as it were, but wandering tribes. They are, in the sense of the Constitution, "Indians not taxed," within our limits for whom we are not responsible, to whom we owe no duty and no protection whatever; and they have abundant authority on this subject, the highest authority in the country. The Supreme Court of the nation has determined, according to the history and according to the politics of the country, that they were never designed to be embraced within the pale of the Constitution, they never belonged to the governing class, were not of the American people; and these States maintain that this people are not entitled to the rights, privileges, and immunities of citizens of the United States. I meet the honorable Senator upon his proposition, and I maintain that it fails utterly and wholly, because, as the matter stands, the freedman is in the power and under the control of these States. They deny his citizenship, claim to determine his *status*, civil and political, and so far are upheld in it by the nation, and the Senator does not propose to interfere.

The honorable Senator talks humanely, as he always does, but he talks to no effect when he assumes that these people, ceasing to be slaves, become American citizens, and then turns them over to the communities in which they are, and upon which they are dependent, and by whom they are to be governed and adjudged; and especially when he holds that interference on the part of Congress would be a violation of State rights and revolutionary.

Mr. HOWE. If his speech were put into a law, it would be all right.

Mr. MORRILL. Yes, if I could put the honorable Senator's speech into a law, I would settle this thing at once; but the difficulty is, that out of this Chamber it has not the force of law. It is powerful for persuasion here, but with these States whose Representatives he asks us to receive, and whose authority over this subject we are told is conclusive, it is worth nothing.

But, Mr. President, to repeat: if this is a question for the national Government, then my honorable friend (if he will allow me to call him so) from Maryland would be right. If he could back his speech by the authority of the nation, and say, "That is the law, and the States shall obey it," then our remedy is complete. Then, sir, ceasing to be slaves, these men become American citizens; they become free men; and the nation, taking upon itself the great obligation to protect its citizens in all their rights, would enact that these States should have no representation whatever until they accorded these

rights, and we should not leave it optional with them. We would say by authority of law, "If you wish your rights and privileges respected, you must respect the rights and the privileges of the whole body of the citizens of the Republic."

The honorable Senator concedes the right of the States to determine the *status* of these freedmen, substantially, when he holds that it is the right of the States to say whether they shall have the right of suffrage or not. Suffrage is the highest element, the highest privilege, nay, the highest right of the American citizen. Without it, all other rights are of little value. Without it, the power to protect his rights is wanting. I maintain that when the honorable Senator argues that the right of suffrage is a matter wholly with the States, and the United States Government has nothing to do with it, and cannot deal with it, he denies to the freedmen within the power of the States the great essential right of American citizenship, without which he has no protection; without which, as a race, he must always be subordinate, always be within the power of the men who vote for him. The logic of the argument of the honorable Senator, that these men become citizens by force of emancipation, is negatived by the concession that it is a question for the States; and we stand here to-day doing what on that argument only we can do, when we say to these people, "If you ignore his rights, you shall not vote for him."

Mr. President, suppose they are free men and citizens; suppose now they belong to the great body of the American people and are part and parcel of it, and that we are one people, that the American people are a unit, and there is no distinction of persons before American law. That being the rule, then I take it, the argument of the honorable Senator from Maryland, so far as a question of injustice to these States is concerned, falls to the ground; for if these men are citizens, as he maintains, and have the rights and privileges of citizenship, it is the rankest injustice that they should be denied the right of suffrage; and any law which the Congress of the United States could pass, or any alteration of the American Constitution which the American people could enact, which should deny these people in the South the right to represent the race to whom they themselves refuse representation and yet govern and oppress by taxation, would be in harmony, I take it, with the general sentiment of mankind; certainly such provision would be in harmony with the principles of justice. By what authority, allow me to ask, is it that these States having within their jurisdiction four millions of human beings, to whom they deny every right known to man, whom they claim to hold to forced labor by black codes and vagrant laws, in their arrogance and assumption turn to the Government of the United States and demand to be allowed to vote for these men thus held in a state of total disability, civil and political?

But, Mr. President, the honorable Senator will allow me to say that I think he is quite at fault in his definition of the rule of American representation. I do not understand, either by the history of that rule, or any inference which can be drawn from a fair interpretation of the Constitution, that the rule is at all as the honorable Senator understands it. He understands the rule to be representation according to numbers. I maintain that the great American rule is, and has been from the beginning, representation according to free men, representation according to citizenship. I read the constitutional provision:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers which shall be determined"—

How?

"by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

Those "other persons" were the slaves, and no others. The basis of representation was on the free persons, not simply on numbers. The exception which follows excludes the idea that it rested on numbers. The great fundamental law was representation on free persons. The exception was of slaves who were not free men, but numbers. All the free men and three-fifths of the numbers shall be counted, is the fair interpretation of that clause; and that is exactly in harmony with the history of the right of suffrage and of the right of citizenship, as interpreted in all the constitutions and in the legislation of all the States during the revolutionary and constitutional eras in this country, with a single exception. To show that I am right; that the great American rule of representation in this country was not numbers, but citizenship, I beg to read to the Senate from the constitutions of the States formed during the revolutionary era of the country. In that of Pennsylvania it was provided:

"That all elections ought to be free; and that all freemen having a sufficient evident common interest with and attachment to the community, have a right to elect officers, or to be elected into office."

There is the principle; not numbers, but "all freemen" have what? Have the right of suffrage. I will now read the provision in the Constitution of Delaware, which is most marked and most explicit:

"That the right in the people to participate in the legislature is the foundation of liberty and of all free government, and for this end all elections ought to be free and frequent; and every freeman having sufficient evidence of a permanent interest with and attachment to the community hath a right of suffrage."

In the same Constitution it was further provided—

"That every freeman, for every injury done him in his goods, lands, or person, by any other person, ought to have remedy by the course of the law of the land, and ought to have justice and right for the injury done to him, freely without fail, fully without any denial, and speedily without delay, according to the law of the land."

I commend that provision most cheerfully to the committee on Reconstruction as the golden rule which, if adopted to-day, as Delaware adopted it in 1776, would be the solution, on the principles of justice and liberty and American law, of the great problems which perplex us.

The Constitution of Maryland provided—

"That the House of Delegates shall be chosen in the following manner: all freemen above twenty-one years of age, having a freehold of fifty acres of land in the county in which they offer to vote, and residing therein, and all freemen having property in this State above the value of thirty pounds current money, and having resided in the county in which they offer to vote one whole year next preceding the election, shall have a right of suffrage in the election of delegates for such county."

Here the right is not on numbers, but on freemen. The Constitution of Massachusetts declared that—

"All elections ought to be free, and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected for public employments."

The provision in the Constitution of New York was in these words:

"That every person who is a freeman in the city of Albany, or who was made a freeman of the city of New York, on or before the 14th day of October, in the year of our Lord 1775, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in Assembly within his said place of residence."

In the Constitution of Connecticut it was provided that—

"The qualifications requisite to entitle a person to vote in election of the officers of government are, maturity in years, quiet and peaceable behavior, a civil conversation, and forty shillings freehold, or forty pounds personal estate. If the selectmen of the town certify a person qualified in those respects, he is admitted a freeman, on his taking an oath of fidelity to the State."

The Constitution of North Carolina declared—

"That all freemen of the age of twenty-one years who have been inhabitants of any county within the State twelve months immediately preceding the day of any election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the Senate."

It will be found that in all the States, with the exception of South Carolina, the rule of American representation as settled by the States during the revolutionary era—that great period which stirred men's hearts in favor of liberty—was on freemen, and not on numbers as the Senator from Maryland supposes. The rule of American representation, as taught authoritatively by the States, the only authority that was then known to the nation, or is indeed now conceded by the Senator, was invariably, with a single exception, on freemen, on the citizens; and it should be remarked that in no single instance, with the exception which I have noted, was there any exception on account of race or color. I therefore respectfully submit to my honorable friend from Maryland that he is entirely mistaken in supposing that the rule of representation, either in the Constitution of the United States or as a great American principle outside of the Constitution, and as taught by the States, was based on numbers.

The honorable Senator from Maryland put the inquiry whether it is to be supposed that the people of Maryland were laboring under the very extraordinary delusion from 1776, when their Constitution was adopted, down to within a recent period, in supposing that they had a constitution or State government "republican in form," notwithstanding it recognized the institution of slavery. Of course I join no issue with the honorable Senator on that proposition. I freely concede that according to the national Constitution of 1789, it is plainly inferable that States might be regarded as "republican in form," although they recognized the institution of slavery. I do not deny that. That is the history of the country. To deny that would be to deny the implication which arises from the Constitution. That was undoubtedly so.

But, sir, we are talking to-day, in the providence of God, not of what the Constitution of 1789 recognized as republican; but the Constitution

having been amended so that slavery no longer exists, the question to-day is, what is republican in fact? If the honorable Senator is right in supposing that the slaves of Maryland, when they were released from slavery by this new provision of the Constitution, became freemen and citizens, entitled to all the privileges and immunities of citizens of other States and of his own State, I ask him whether his State can be republican in form or in fact if now it denies to one-fourth of its population the rights of citizens? That is the question that arises on the facts in this case. We are not arguing the case supposed by the honorable Senator from Maryland. That is a case made up on the Constitution of Maryland of 1776. She has a free Constitution to-day, and by the force of that Constitution all her population are freemen and citizens, according to the interpretation which the honorable Senator himself gives it; and now being freemen and citizens, and that being the character of the national Government; and liberty and equal and exact justice to all men the rule; I ask the honorable Senator whether if his State should adopt a provision in her Constitution which disqualified one-fourth of her citizens arbitrarily on account of color, and denied them all civil and political rights, privileges, and immunities, that State would be republican in form or in fact? That is a case that arises on the facts we are considering. I undertake to maintain here, and will maintain it anywhere, that on the basis of a free constitution, one of the grand results of that terrible struggle through which the nation has passed, no State in this Union can be a republican State, which does not accord equal civil privileges, rights and immunities to all its citizens; it cannot be republican either in law or in fact according to the fundamental principles of American liberty. This question of slavery in the national Constitution was exceptional; this question of slavery in the State Constitutions was exceptional also. It was not in harmony with the great principle of American liberty. The principle which underlies our institutions and which formed the rule was equal rights and equal protection to all men. I admit that we agreed in the Constitution of 1789 to recognize the exception; but the exception no longer exists, and the rule is absolute and ought to be omnipotent. There is nothing now in the way of its universality, and it should now be held to mean equal and exact justice to all men. The authority of this Government in this respect ought to be imperial everywhere, and it should protect its citizens against State authority and State interpretations, in their rights, privileges and immunities as citizens of the United States; and whenever it fails to do that, it will fail to command the respect of mankind.

I say, therefore, in reply to the inquiry of the honorable Senator whether "it is to be supposed that his State has labored under a delusion from 1776 down to the present time, in supposing that its Government was republican in form up to the present hour," that up to the time of emancipation it was so, undoubtedly. But now the times have changed. Sufficient unto that day was the evil thereof. We as a people are required now to conform our Constitution and our laws, as well as our morals and our ethics, and our economies, to the great American rule, "equal and exact justice to all men."

The opponents of this measure demand the immediate admission of these States without conditions for the national security and without

protection for the freedmen. The rebel debts are still unrepudiated by these States and menace the public credit, while the national debt is unassumed by them. Secession is not annulled but repealed, and in condition, on fresh opportunity, to repeat its attack upon the national sovereignty. The freedmen have no protection in these States outside of that scanty and temporary protection, inadequate and precarious, which is afforded through the Freedmen's Bureau. Their rights of manhood are denied. Everybody knows that since these States have themselves become "reconstructed" they have enacted black codes and vagrant laws to take possession and control of these "freedmen." The great struggle to-day is for the possession of the negro, now, as in the past. That is the great struggle in the South. Slave-masters have lost their personal control over them. They demand now that they shall be remanded into their custody, they having the political power of the State. I read the sentiments, Mr. President, of a leading politician in the South, in which the purpose is expressed in a sentence or two. Judge Humphreys, of Alabama, in endeavoring to induce that State to return to the Union, says:

"Gentlemen, our safest place is in the Union. Grant it, the idea of chattel slavery is dead, if you please; our Democratic allies will give us back the race in the condition of forced laborers, and it does not matter in which state we have them, if we have them under our control."

Mr. President, the contest for chattel slavery is over, but the struggle for the possession of the negro as a forced laborer still goes on, and we seem quite insensible to it. Under the pretence of a public necessity, it is demanded that Congress admit these States into their relations with the Federal Union, requiring no security for the protection of this defenceless race, remanding them to the custody of their old masters, knowing that their object and their purpose is to hold them as an unprivileged and unprotected class. That such sentiments find expression on this floor is a matter, I think, of surprise.

The honorable Senator from Pennsylvania, [Mr. COWAN,] in the ardor—I hope it was—of his eloquent speech the other day, gave utterance to a similar sentiment, showing that the same insensibility still holds its power in this Senate. He talks upon this great question in connection with the restoration of these States of the "inferiority" of this race. He says the question of suffrage never was a question of color or race, but it was a question of "inferior manhood," an "inferior article," to use the expressive phrase of the honorable Senator. And so it comes to this: on a proposition the object of which is to secure some rights to a race that we know has none accorded to it, and is in the arbitrary power of these States, Senators rise in their places here and signify their determination to admit these States upon the floor of the Senate, give them political power and concede to them political rights to lord it over this race, and justify the contemplated injustice and inhumanity on the ground of "inferior manhood"—the negro is an "inferior article!" They are not worthy of the concern of an American statesman; they are waifs on society; they are nomadic; they are simply Africans; they have no place in the American Constitution; they are outside of society, outside of the objects of American law! This is "a white man's Government!" Remand them to their old masters, who we know purpose to oppress them and deny

them every civil right, and then with fresh memory of the recent flagrant war, reach out the hand of friendship to men whose hands are still red with the blood of our children, and welcome them upon this floor to places of authority and power, with such purposes and for such ends!

Mr. President, I am sorry to say this is not even the worst of it. The freedman has no protection at home, no hope of it here, and, alas! no hope of it anywhere. The saddest utterance that any American statesman has ever given expression to, has fallen from him who at the present time occupies the highest place in the gift of the people of this country. I do not go out of my way to allude to it. I should not be doing my duty to this subject if I did not notice it. On this question of the defencelessness of this race, and whether the American people should extend to it the hand of protection, let me read from a message sent to this Senate under circumstances which give it peculiar force.

"The idea upon which the slaves were assisted to their freedom was that on becoming free they would be a self sustaining population."

In the first place, it may be thought a little singular that it should be announced that these people in any very high and lofty sense were "assisted to their freedom" at all. We never as a nation undertook to give them freedom on terms at all creditable to us. We denied interposition in their behalf, even until it became obvious that Providence did not intend we should have our own liberty, until we gave them a chance to help us by obtaining their liberty—that was the ground we occupied. I deny that we volunteered to help the slave to his freedom on his account. The history of the times does not justify such assumption. We did not so much as propose to embrace his freedom in the objects of the war; nay, a great party in this country arrayed itself against every effort to aid him, and deprecated such efforts as contrary to the objects of the war; and when our late President at length came to the conclusion that we ought to declare the freedom of the slaves, how did he announce it to the world? As helping them to their freedom? As a measure of justice and humanity to the oppressed? No; but as helping ourselves to victory. He had felt the public pulse; he had watched the wondrous workings of Providence in the great conflict in which the nation was involved; he had seen the nation hang in the doubtful balance of war; he saw and came to realize that God in His providence did not intend this nation should secure its own independence, until it yielded the rights of the black; then the negro was mustered into the military service to bear arms in defence of the Government; then the race was taken from the power of the rebellion and placed on the side of the nation. If it was understood when he was "assisted to his freedom" that he was to take care of himself, was it not in Heaven's mercy, at least, to be inferred that he was to have opportunity given him to do it; that he was not to be, by the nation he served, remanded to his old master and all opportunity cut off? That we have a right to ask for him. That we ought to demand. If we do less than that and fall so far short in our duty, we have no right to expect the smiles of Heaven or the approbation of the American people. I question the historical accuracy of what is assumed. The implication is that we helped him to his liberty, and now we have done all that is required of us. The nation cannot thus lightly put aside its obligations to a defenceless race called to its aid in its day of peril; it cannot so cancel

its moral obligations to see to it that, having led him out of the land of bondage, it is not to leave him to perish in the wilderness or be returned to a servitude even more heartless and cruel than his former bondage.

We know he is in the power of his old master, and our responsibility is, not that we have not helped him, but that we have helped his oppressor. We have put the rebel master in authority, restored him to places of power, invested him with the power of the State, and propose to remand his former slave to his custody to become the slave of society. He reigns supreme to-day in all these States, and demands admission into these Halls, and it is demanded now that Congress open the door and admit the old master, clothed with authority and power. We all know that the freedman has no protection, and now from the high places of power it is declared as indicative of "the policy" the Government will pursue to its late allies and faithful friends, that when we freed him it was understood that he should take care of himself. Mr. President, as sad as this picture is, it is by no means the worst of it. There is a sentiment in this message which shocks me, and which I fear will shock the sensibilities of mankind. Knowing the condition of the freedman, and his situation; knowing that from the beginning he has been held by these States as outside of the pale of constitutional or legal protection; knowing the sentiments of that region of the country in which he is held in subjection, the painful significance of the following is plain:

"In truth, however, each State, induced by its own wants and interests, will do what is necessary and proper to retain within its borders all the labor that is needed for the development of its resources. The laws that regulate supply and demand will maintain their course, and wages of labor will be regulated thereby. There is no danger that the exceedingly great demand for labor will not operate in favor of the laborer."

Now, Mr. President, consider that that language is uttered as a reason for refusing to give the necessary executive consent to a law designed for the protection of the freedman, designed to protect him from his old master, to open up opportunities to him, to reach out the hand of the nation and stand between him and absolute want and oppression. To this homeless, houseless, defenceless race who has no abiding place, the Congress of the United States proposed to extend the hand of the nation and protect it and provide for its temporary wants, and with a knowledge of all the facts, the reply from the Executive is, "Leave him to the laws of demand and supply."—the interpretation of which is, there is no law or justice to which he can appeal. It is said that the courts of the States are open to him; let him appeal to the courts of the States; but does any one need to be told that the State courts are closed forever against him? that there he has been dumb for long ages of oppression? Let him have recourse to the courts of the United States; that is to refer him to a court which has already determined that the common sentiment of this country was, that the black man had no rights which that court was bound to respect. In a condition of destitution, and suffering and want, the black man cries to the nation for recognition of his manhood; for protection. The nation answers back: there is for you no justice, no protection, no courts, no rights, civil or political; in the language of the chief Executive, you are left to "the laws of demand and supply."